

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of Financial and Insurance Services

Edmond S. Mazur,

Petitioner,

v

**Case No. 03-384-L
Docket No. 2003-1515**

**Office of Financial and Insurance
Services,**

Respondent.

For the Petitioner:

**Edmond S. Mazur
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For the Respondent:

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**Issued and entered
this 14th day of May 2004
by Linda A. Watters
Commissioner**

FINAL DECISION

The Administrative Law Judge issued a Proposal for Decision dated March 17, 2004.
She recommended that the Commissioner grant the Petitioner an insurance producer's license.
The Staff filed Exceptions on April 29, 2004.

The factual findings in the PFD are in accordance with the preponderance of the evidence. The PFD is attached and made part of this final decision. The Procedural

Background and the Findings of Fact are adopted. The Conclusions of Law and Proposed Decision are not adopted.

II

ANALYSIS

The Administrative Law Judge identified Section 1239(1) of the Insurance Code of 1956, as amended (“Code”), MCL 1239(1), as key to her recommendation. It provides:

In addition to any other powers under this act, the commissioner may place on probation, suspend, revoke, or refuse to issue an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions for any 1 or more of the following causes:

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

She recognized that the Petitioner engaged in dishonest conduct 13 years ago. However, she considered him to be rehabilitated and determined that the Commissioner had discretion to license him because Section 1239(1) says the Commissioner “may... refuse to issue an insurance producer’s license...”

In its exceptions, the Staff focuses upon Section 1205(1) of the Code, MCL 500.1205(1), which provides:

...An application for a resident insurer producer license shall not be approved unless the commissioner finds that the individual meets all of the following:...

(b) Has not committed any act that is a ground for denial, suspension, or revocation under section 1239.

* * *

Under this section, the Commissioner has no discretion to approve an insurer producer license where an applicant has committed any act that is a ground for denial of a license under Section 1239. Here, the applicant has committed such an act.

Where statutes appear to conflict, a court or administrative agency is first supposed to look for a way to harmonize them. Here, the edict in Section 1205(1) allows for only one course for the Commissioner—disapproval of the application. Section 1239(1) allows the Commissioner discretion.

One attempt to bring harmony between the sections is to conclude that the Commissioner must exercise the discretion conferred by Section 1239(1) in light of all the standards in Chapter 12, including Section 1205(1). That is, the Commissioner chooses to be guided by the clear standard of Section 1205(1) in her exercise of discretion.

Where harmony cannot be found between two conflicting statutes, then other principles of statutory construction emerge. The more recent statute may prevail over the earlier statute. The more particular provision may prevail of the more general provision.

Section 1205(1) and 1239(1) both became effective March 1, 2002, so this is no basis for deciding which governs. However, Section 1205(1) is particularly concerned with establishing standards for licensure. Section 1239(1) deals with general standards of conduct and remedies. Thus, it is appropriate for the Commissioner to be guided in this decision by Section 1205(1).

III CONCLUSIONS OF LAW

Based upon the considerations above, it is concluded that:

1. Sections 1205(1) and 1239(1) are best harmonized by the Commissioner applying the mandatory licensing standards of Section 1205(1) in exercising her discretion under Section 1239(1).
2. If these sections cannot be harmonized, Section 1205(1) governs because it establishes the standards for licensure, which is at issue in this contested case.
3. The Petitioner does not meet the standards for licensure under Section 1205(1).

IV ORDER

Therefore, it is ORDERED that the refusal to issue an insurance producer's license to the Petitioner is upheld.